

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LISA BROWN, M.D.,  
Plaintiff

v.

HAMOT MEDICAL CENTER,  
Defendant

Civil Action No. 05-32-E

Deposition of JAMES A. PEPICELLO, M.D., taken  
before and by Janis L. Ferguson, Notary Public in  
and for the Commonwealth of Pennsylvania, on Friday,  
December 16, 2005, commencing at 9:37 a.m., at the  
offices of Scarpitti & Mead, 1001 State Street,  
Suite 800, Erie, Pennsylvania 16501.

For the Plaintiff:

Patrick Sorek, Esquire  
Leech Tishman Fuscaldò & Lampl, LLC  
525 William Penn Place  
30th Floor  
Pittsburgh, PA 15219

For the Defendant:

Kerry M. Richard, Esquire  
Tobin O'Connor Ewing & Richard  
5335 Wisconsin Avenue NW  
Suite 700  
Washington, DC 20015

Reported by Janis L. Ferguson, RPR  
Ferguson & Holdnack Reporting, Inc.

EXHIBIT

11

<p style="text-align: right;">Page 78</p> <p>1 MS. RICHARD: I actually have just a couple</p> <p>2 questions.</p> <p>3</p> <p>4 CROSS-EXAMINATION</p> <p>5 BY MS. RICHARD:</p> <p>6</p> <p>7 Q. Earlier when Mr. Sorek was asking you questions</p> <p>8 about any training that might be provided to doctors at the</p> <p>9 hospital, I think he was referring to personnel laws, and</p> <p>10 you indicated no. Is there an orientation for doctors?</p> <p>11 A. Yes, there is.</p> <p>12 Q. And these are for newly privileged physicians?</p> <p>13 A. Correct.</p> <p>14 Q. Who conducts that orientation?</p> <p>15 A. The Chief Medical Officer.</p> <p>16 Q. So that would be you in some cases?</p> <p>17 A. Up until a few months ago, it was me, yes.</p> <p>18 Q. And who is it now?</p> <p>19 A. Dr. Richard Long.</p> <p>20 Q. Is there any -- during that orientation process,</p> <p>21 is there any coverage of expected behavior of physicians?</p> <p>22 A. Yes, there is.</p> <p>23 Q. Does that coverage include the hospital's</p> <p>24 expectations of physicians with regard to discrimination or</p> <p>25 harassment?</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Scott Kern.</p> <p>2 Q. Okay.</p> <p>3 A. Who came to me when this issue first arose and</p> <p>4 discussed it with me specifically.</p> <p>5 Q. What did he say?</p> <p>6 A. In so many words, to summarize, he said, I know I</p> <p>7 shouldn't be here, but I want to discuss this with you, and</p> <p>8 it won't come up any further. He explained why he was</p> <p>9 there. The reason was his -- he had a personal relationship</p> <p>10 with Dr. Brown through family members. And basically was --</p> <p>11 was asking about the process and asking me to consider the</p> <p>12 circumstances carefully.</p> <p>13 Q. Did he ask you to reverse the decision?</p> <p>14 A. He asked if there was a way to reverse the</p> <p>15 decision. I don't recall that he specifically asked me at</p> <p>16 that time to reverse the decision.</p> <p>17 Q. Did you have any other contacts with anybody?</p> <p>18 A. Yes. Attorney Jim McNamara and Attorney Joel</p> <p>19 Snively, who I believe at the time were representing Dr.</p> <p>20 Brown, came and spoke to me and, again, asked me about the</p> <p>21 circumstances, asked me if there was some way that we could,</p> <p>22 in so many words, work this out. And we discussed it for a</p> <p>23 while. I did not give any indication of anything beyond</p> <p>24 that. It really ended at the discussion between the two of</p> <p>25 them and me.</p>
<p style="text-align: right;">Page 79</p> <p>1 MR. SOREK: Object to the form as leading.</p> <p>2 MS. RICHARD: I'm asking a specific question.</p> <p>3 Q. Does it include any coverage of those issues?</p> <p>4 MR. SOREK: It's still leading.</p> <p>5 MS. RICHARD: That's fine.</p> <p>6 MR. SOREK: Okay.</p> <p>7 A. Yes, it does.</p> <p>8 Q. Can you tell me whether there's anything in</p> <p>9 writing that goes to doctors conveying the expectations with</p> <p>10 regard to discrimination or harassment.</p> <p>11 A. Yes. Contained within the medical staff handbook</p> <p>12 in the section that contains the fair hearing plan, there is</p> <p>13 a section specifically that deals with expectations with</p> <p>14 respect to physician behavior to colleagues, to staff, to</p> <p>15 patients, and so forth.</p> <p>16 Q. Thank you. Is John Lubahn a member of the faculty</p> <p>17 of the orthopedic surgery residency program?</p> <p>18 A. Yes, he is.</p> <p>19 Q. Are there any contacts that you have had with</p> <p>20 anybody -- not counting your counsel -- with regard to Lisa</p> <p>21 Brown that you haven't been asked about here today?</p> <p>22 A. Yes.</p> <p>23 Q. Can you tell me about those.</p> <p>24 A. Yes. I had a visit from a Board member.</p> <p>25 Q. Which Board member?</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. Did they ask you to consider reversing the</p> <p>2 decision?</p> <p>3 A. Yes.</p> <p>4 Q. And did you say no?</p> <p>5 A. I don't recall that I said no. I recall that --</p> <p>6 what I do recall is that I said we have a process in place</p> <p>7 to deal with this, and we will let the process take its</p> <p>8 course.</p> <p>9 Q. In your experience, does the process ever result</p> <p>10 in reversal of a decision of somebody, for instance, at a</p> <p>11 program director level?</p> <p>12 A. I'm trying to recall my own -- Dr. Brown's case</p> <p>13 was the only incident in recent memory. When I harken back</p> <p>14 to my own experience with our surgical residency. It was</p> <p>15 ultimately the program director's decision was upheld.</p> <p>16 Q. Was it your opinion that the committee had the</p> <p>17 discretion to overrule Dr. Lubahn, if they chose to?</p> <p>18 A. Oh, yes.</p> <p>19 Q. Was it your opinion that the medical education</p> <p>20 committee had discretion to overrule the grievance committee</p> <p>21 if they chose to?</p> <p>22 A. Yes.</p> <p>23 Q. And was it your opinion the medical staff</p> <p>24 executive committee had discretion to overrule the decision?</p> <p>25 A. Yes, they did.</p>

Page 82

1 Q. And what about the Board of Directors?  
 2 A. Yes, they did.  
 3 Q. You indicated that you had presented the case to  
 4 the Board for consideration on -- I think it was May 25th of  
 5 2004.  
 6 A. I believe that was the date, yes.  
 7 Q. Is it your memory, even though you can't remember  
 8 specific questions, that there were questions asked by Board  
 9 members?  
 10 A. Yes, there were.  
 11 Q. Would you say there were a lot of questions asked  
 12 by Board members?  
 13 MR. SOREK: Object to the form.  
 14 A. Yes, there were.  
 15 Q. And can you tell me whether any Board member  
 16 questioned whether the decision should be overturned and Dr.  
 17 Brown allowed to come back?  
 18 A. Yes. Mr. Kern did make a statement to that effect  
 19 at the Board meeting.  
 20 Q. Can you tell me what else you remember Mr. Kern  
 21 saying at the Board meeting.  
 22 A. Again, not specifically, but he did make a plea,  
 23 if you will, to the Board to consider this and consider  
 24 reversing this decision.  
 25 Q. Did he suggest that there might be legal exposure

Page 83

1 to the Board if they went forward with this decision?  
 2 A. He did, yes.  
 3 Q. Did he suggest that it might be a claim for breach  
 4 of contract?  
 5 A. I don't recall the exact statement that he made  
 6 specifically about the legal issues.  
 7 Q. Did the Board ask questions of Mr. Kern?  
 8 A. I don't -- I don't recall exactly whether they  
 9 asked -- whether any specific questions were directed at  
 10 him.  
 11 Q. Okay. Were questions asked of you or -- I'm going  
 12 to also -- let me ask you just that question first. Were  
 13 questions asked of you --  
 14 A. Yes.  
 15 Q. -- by Board members?  
 16 A. Yes.  
 17 Q. And did any Board member suggest to you that there  
 18 might be some alternative to upholding Dr. Lubahn's decision  
 19 in this case?  
 20 A. Yes. Questions were asking about were there  
 21 alternatives to the recommendation.  
 22 Q. And did you give them any alternatives?  
 23 A. I didn't suggest any specific alternatives to  
 24 them.  
 25 Q. Did they suggest any alternatives?

Page 84

1 A. Yeah, there were a couple of questions about, you  
 2 know, would it be possible to -- and, again, I really don't  
 3 remember exactly -- whether it would be possible to make  
 4 some accommodation in her training or -- again, it's hard to  
 5 go back that far and remember exactly. But there was  
 6 discussion about what were the alternatives here in terms of  
 7 this particular decision.  
 8 Q. About how long, if you remember, did the Board  
 9 consider this matter of Dr. Brown?  
 10 A. I don't know exactly, but, you know, probably 30  
 11 minutes. Maybe even a bit longer.  
 12 Q. And at the end, how did they vote?  
 13 A. They voted to uphold the recommendation, and it  
 14 was a unanimous vote.  
 15 Q. Did Mr. Kern vote?  
 16 A. No. He was excused.  
 17 MS. RICHARD: I have nothing further, then.  
 18  
 19 REDIRECT EXAMINATION  
 20 BY MR. SOREK:  
 21  
 22 Q. Dr. Pepicello, what is the oversight that the  
 23 hospital has for compliance with these expectations of  
 24 physician behavior? That is, you talked about the handbook,  
 25 and you talked about the expectations. How does the

Page 85

1 hospital check to see that the expectations are complied  
 2 with?  
 3 A. The Chief Medical Officer is -- in fact, any  
 4 administrative officer, but it's part of the role of the  
 5 Chief Medical Officer to investigate complaints about  
 6 physician behavior or physician responsiveness. And that  
 7 person, the Chief Medical Officer, is the one who exerts the  
 8 oversight.  
 9 Q. Do you know whether, in fact, that there is  
 10 review -- do you know whether, in fact, that the Chief  
 11 Medical Officer does that?  
 12 A. Yes.  
 13 Q. Have you done it in your role?  
 14 A. Yes.  
 15 Q. Describe how you do it. For example, you might  
 16 say something like, well, once a month I get a report from  
 17 "X," or I review this file, something like that. Can you  
 18 describe what you do to carry out your oversight.  
 19 A. Well, typically, it's done on a -- on an ad hoc  
 20 basis. If there's a complaint by a patient, a staff member,  
 21 a colleague about a behavior or a series of behaviors, it  
 22 would be brought to my attention, and the first step might  
 23 be sitting down with the person and getting more facts and  
 24 finding out what the details were and counseling and those  
 25 kinds of things.

27 (Pages 82 to 85)